

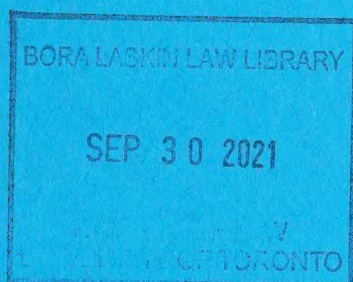


UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL TRADE REGULATION

Volume 1

2021-2022



Michael Trebilcock

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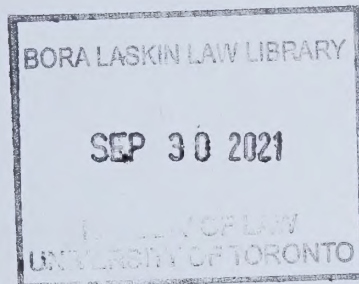


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INTERNATIONAL TRADE REGULATION

Syllabus

Fall 2021 - 2022

Professor Michael Trebilcock

Students are required to purchase a paperback copy of Michael Trebilcock and Joel Trachtman, *Advanced Introduction to International Trade Law*, (Edward Elgar, 2020, 2nd ed) from the Law School Bookstore. The book is available through the bookstore online at https://uoftbookstore.com/law_faculty.asp? . Shipping is available and in-store pick-up may be available if health guidelines permit.

Hard copies of the casebook of supplementary readings are also available for purchase from the bookstore.

The class will be held on Tuesdays from 2:10-4:00 p.m.

This seminar will explore the regulatory framework governing international trading relations. It will begin with the economic theory of international trade and in particular the case for free trade, then examine the politics of trade policy and objections and sources of opposition to free trade.

The following topics will be examined: international economic institutions, the GATT/WTO multilateral trade law regime, the principles of non-discrimination (most favoured nation and national treatment), preferential trade agreements, special & differential treatment for developing countries, anti-dumping regulation, subsidies and countervailing duties, safeguards, adjustment assistance, trade and agriculture, trade in services and migration, trade-related investment measures, trade-related intellectual property rights, trade and health and safety standards, trade and the environment, trade and labour standards & human rights. The course will also address contemporary trade issues including access to vaccines & other essential medicines, and the US-China trade conflict.

The seminar will strongly emphasize the institutions and political economy of international trading relations and how economic and political forces have shaped current regulatory policies and may shape future policies.

Evaluation: Students will be required to write 750-word comments on selected readings for four of the classes (50%) and a 3,500-word paper on an issue of their choosing (50%). Students writing a Supervised Upper Year Research Paper (SUYP) in this course will be required to write a reduced number of comments (2).

READINGS:

VOLUME 1

1. The Evolution of Trade Theory and Policy

a. Trebilcock & Trachtman, *op. cit.*, Chapters 1 & 2.

P 1

b. Richard Baldwin, *The Great Convergence: Information Technology and the New Globalization* (The

c. Nicolas Lamp, "How Should We Think About the Winners and Losers from Globalization? Three Narratives and their Implications for the Redesign of International Economic Agreements" (2020) 30:4 *European Journal of International Law* 1359. P 36

2. Non-Discrimination: The Most Favoured Nation Principle; the National Treatment Principle

a. Trebilcock & Trachtman, *op. cit.*, Chapters 3 and 5.

b. WTO, *Japan – Taxes on Alcoholic Beverages*, Edited Appellate Body Report (1996). P 76

c. WTO, *European Communities – Measures Affecting Asbestos and Asbestos Containing Products*, Edited Appellate Body Reports (2000) paras. 1-154. P 89

d. Problem: The Canada-US Beer Saga (for class discussion only, not written comments). P 121

3. Preferential Trade Agreements; Special & Differential Treatment for Developing Countries

a. Trebilcock & Trachtman, *op. cit.*, Chapters 4 and 16.

4. Anti-Dumping Laws

a. Trebilcock & Trachtman, *op. cit.*, Chapter 6.

b. WTO, *United States – Continued Dumping and Subsidy Offset Act of 2000*, Appellate Body Report Summary (2002). P 123

c. WTO, *United States – Continued Dumping and Subsidy Offset Act of 2000*, Recourse to Arbitration by the United States under DSU Article 22.6 Summary (2004). P 139

5. Subsidies and Countervailing Duties

a. Trebilcock & Trachtman, *op. cit.*, Chapter 7.

b. Mark Wu, "The China Inc. Challenge to Global Trade Governance" (2016) 57 *Harvard International Law Journal* 261. P 155

c. Alan O. Sykes, "The Limited Economic Case for Subsidies Regulation", International Centre for Trade and Sustainable Development (March 2015). P 220

VOLUME 2

6. Safeguards; Agricultural Protectionism

A) Safeguards

- a. Trebilcock & Trachtman, *op. cit.*, Chapter 8.
- b. Gordon H. Hanson, "Can Trade Work for Workers?", *Foreign Affairs* 100:3 (May/June 2021) 20. P 1
- c. Michael J. Trebilcock and Sally Wong, "Trade, Technology and Transitions: Trampolines or Safety Nets for Displaced Workers?" *Journal of International Economic Law* (2018) pp. 6-9 and 33-37 (Lessons from the Comparative Experience). P 8

B) Agricultural Protectionism

- d. Trebilcock & Trachtman, *op. cit.*, Chapter 9.

7. Trade in Services; Cross Border Movement of People

A) Trade in Services

- a. Trebilcock & Trachtman, *op. cit.*, Chapter 10.
- b. WTO, *GATS – Fact and Fiction* (2001) a booklet published by the WTO Secretariat. P 18

B) Cross-Border Movement of People

- c. Michael J. Trebilcock, "The International Movement of People: The Fourth Economic Freedom" (Max Planck Working Paper 2018). P 36
- d. Richard Baldwin, *The Globotics Upheaval: Globalization, Robotics, and the Future of Work* (Oxford University Press, 2019), Introduction. P 55

8. Trade-Related Intellectual Property Rights (TRIPS)

- a. Trebilcock & Trachtman, *op. cit.*, Chapter 12.
- b. WTO, "Declaration on the TRIPS Agreement and Public Health", Ministerial Declaration, WT/MIN(01)/DEC/W/2, 14 November 2001. P 66
- c. WTO, "Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health", Decision of the General Council, WT/L/540, 8/30/2003. P 68

- d. Joseph E. Stiglitz & Lori Wallach, “Will Corporate Greed Prolong the Pandemic?”, *Project Syndicate* (6 May 2021). P 73
- e. Peter J. Hotez, Maria E. Bottazzi, and Prashant Yadav, “Producing a Vaccine Requires More Than a Patent”, *Foreign Affairs* (10 May 2021). P 79
- f. Martin Wolf, “We Can End the Covid Pandemic in the Next Year”, *Financial Times* (25 May 2021). P 87
- g. Chad P. Brown & Thomas J. Bollyky, “Here’s How to Get Billions of COVID-19 Vaccine Doses to the World”, *Peterson Institute For International Economics* (18 March 2021). P 94

9. Trade-Related Investment Measures (TRIMS)

- a. Trebilcock & Trachtman, *op. cit.*, Chapter 11.
- b. Gus Van Harten, “Five Justifications for Investment Treaties: A Critical Discussion” 2:1 *Trade, Law, & Development* (2010) 1-32. P 107
- c. JA Van Duzer, “Investor-State Dispute Settlement in CETA: Is it the Gold Standard?”, *CD Howe Institute Commentary* 459, 2016. P 147

VOLUME 3

10. Trade and Health and Safety Regulation

- a. Trebilcock & Trachtman, *op. cit.*, Chapter 13.
- b. Cary Coglianese et al., “Consumer Protection in an Era of Globalization” in Cary Coglianese et al. *Import Safety: Regulatory Governance in the Global Economy*, (Philadelphia: University of Pennsylvania, 2009): 3-21. P 1
- c. WTO, *EC Measures Concerning Meat and Meat Products (Hormones)*, Report of the Appellate Body (1997). P 11
- d. Brendan McGivern, “WTO Appellate Body Report: United States – Continued Retaliation in the Hormone Dispute” (October 2008). P 65
- e. WTO, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, Appellate Body Report Summary (2012). P 72

11. Trade and the Environment

- a. Trebilcock & Trachtman, *op. cit.*, Chapter 14.
- b. WTO, *United States – Import Prohibitions of Certain Shrimp and Shrimp Products*, Edited Report of the Appellate Body (1998). P 99

- c. WTO, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, Recourse to Article 21.5 of the DSU by Malaysia (2002), paras. 1-11 and 79-154. P 136
- d. WTO, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, Appellate Body Report Summary (2014). P 174

12. Trade, Labour Standards & Human Rights; the Future of the International Trading System

A) Trade, Labour Standards & Human Rights

- a. Trebilcock & Trachtman, *op. cit.*, Chapter 15.
- b. Michael J. Trebilcock & Dan Poliwoda, “Revisiting the Trade-Labour Standards Nexus: The Case of China and Its Uighur Minority”, 2021. P X

B) The Future of the International Trading System

- c. Dani Rodrik, *Straight Talk on Trade* (Princeton, 2018), Chapters 1 and 12 (pages 1-14, 267-274) P 209
- d. Michael J. Trebilcock, *Navigating the Free Trade – Fair Trade Fault-Lines* (Northampton, MA: Edward Elgar Publishing, 2021), Chapter 8 (pages 126-134). P 231

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- a. The General Agreement on Tariffs and Trade P 1

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- c. Nicolas Lamp, “How Should We Think About the Winners and Losers from Globalization? Three Narratives and their Implications for the Redesign of International Economic Agreements” (2020) 30:4 *European Journal of International Law* 1359. P 36

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- c. WTO, *European Communities – Measures Affecting Asbestos and Asbestos Containing Products*, Edited Appellate Body Reports (2000) paras. 1-154. P 89
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Chapter 2:

Non-Discrimination: The Most Favoured Nation Principle; the National Treatment Principle Trade & Treatment

Problem: The Canada—US Beer Saga

(For class discussion, not written comments)

In 1992, the US filed a formal GATT complaint against Canada, principally with respect to the following regulations and policies pertaining to the distribution of beer in Ontario:

1. Listing Restrictions

With respect to complaints against listing restrictions, the US alleged that the LCBO would only list beer in smaller packages than domestic beer and that Brewers Retail (jointly owned by Labatt's and Molson) would not stock imported beer.

2. Differential Mark-Ups

The US alleged that the LCBO, which by provincial statute operates as a wholesale monopoly distributor of beer in Ontario, as well as operating an import monopoly, was applying differential wholesale mark-ups relative to domestic beer.

3. Minimum Reference Prices

The US alleged that the Liquor Licensing Commission of Ontario, which had authorized Brewers Retail to operate a retail monopoly over the distribution of packaged beer, had adopted rules and regulations that imposed price floor on all beer retailed through Brewers Retail outlets, thus constraining price competition between imported and domestic beer.

4. Environmental Can Tax

Shortly after a GATT panel ruled on the three foregoing classes of allegations, the Ontario government adopted an environmental can tax that imposed a tax on "non-refillable beer containers". Most Canadian beer is sold in bottles; most imported US beer is sold in cans.

5. Sub-National Policies

Most of the rules and regulations which the US complained about in the course of this dispute originated at the provincial rather than federal level, and provinces are not parties to or bound directly by the GATT.

Questions:

What are the arguments that the US and Canada might make on each of the foregoing issues?

How might you expect the GATT/WTO Panel to resolve these issues?

Chapter 4:

Anti-Dumping Laws

Chapter 5:

Subsidies and Countervailing Duties

